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Pat Wood, III
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Robert W. Gee
Commissioner

Judy Walsh
Commissioner

May 15, 1996

Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington, D.C. 20554

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RE: CC Docket No. 96-98 (FCC 96-182)
In the Matter of Implementation of the
Local Competition Provisions in the
Telecommunications Act of 1996

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To the Secretary:

Enclosed herewith for filing with the Commission are an original plus sixteen copies of the Comments of the Public Utility Commission of Texas in the above captioned matter. Comments relating to Dialing Parity, Number Administration, and Access to Rights of Way are being provided in a separate filing as instructed by the Notice. By a copy of this transmittal, we are also providing an electronic copy of the filing as requested.

Please acknowledge receipt by affixing an appropriate notation on the duplicate copy of this letter furnished herewith for that purpose and returning same to the undersigned in the enclosed, self-addressed envelope.

Sincerely,

Vicki Oswalt
Director, Office of Policy Development

cc: ITS, Inc.
Ms. Janice Myles, Common Carrier Bureau

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of

**Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996**

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CC Docket No. 96-98

**COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

**Pat Wood, III, Chairman
Robert W. Gee, Commissioner
Judy Walsh, Commissioner**

May 13, 1996

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS

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Executive Summary

The Public Utility Commission of Texas (Texas PUC) herein provides its Comments to the Federal Communications Commission (FCC) regarding implementation of the local competition provisions in §§251, 252, and 253 of the Telecommunications Act of 1996 (1996 Act). This executive summary highlights the issues that the Texas PUC deems most critical from the Texas regulatory perspective, although other issues are addressed in more detail in the main sections of the comments. (The Texas PUC is filing separate comments regarding dialing parity and number administration.)

Just as the FCC has received a strong mandate from Congress in the form of the Telecommunications Act of 1996, so did the Texas PUC receive a totally revised telecommunications policy directive from the Texas Legislature in the Public Utility Regulatory Act of 1995 (PURA95). Many of the Texas PUC's comments to the FCC in response to this Notice of Proposed Rulemaking reflect the policy language enacted by the Texas Legislature through PURA95, as certain portions seem particularly responsive to the questions posed in the Notice.

Since the passage of the 1996 Act, the Texas PUC has been aggressively exploring the possible effects of the Act on regulatory activities in Texas. Clearly, the Texas PUC has an obligation to implement the provisions of PURA95 to the extent possible, but the Texas PUC has established guidelines for implementing PURA95 in light of the 1996 Act. The Texas PUC will harmonize any perceived differences in the two laws whenever possible, but since dockets must be

handled on a case-by-case basis, it is uncertain to what extent the Texas PUC will encounter conflicts between the two pieces of legislation.

The Texas PUC already has in place or is in the process of developing various mechanisms for implementing a transition to competitive local exchange markets in Texas. On April 10, 1996, the Texas PUC adopted an interconnection rule, which will serve as the foundation for the establishment of negotiated agreements between carriers. In addition, various proceedings are in progress at the Texas PUC to address issues relating to resale, interim number portability, and unbundling.

Because the Texas PUC is already moving toward making competitive local markets a reality through implementation of the Texas statute, the Texas PUC urges the FCC to allow states the flexibility to continue implementation of local competition (by way of state rules and proceedings that are already established or underway) so that progress toward competitive local markets is not reversed or delayed. Although specific federal rules may be appropriate in some cases, guiding principles would be more suitable for those states, such as Texas, that are already actively implementing local exchange competition.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications Act)	
of 1996)	

COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS

I. Introduction and Overview of Texas Approach to 1996 Act

1. In its Notice of Proposed Rulemaking (Notice) adopted on April 19, 1996,¹ the Federal Communications Commission (FCC) initiated a rulemaking to consider and implement the local competition provisions in §§ 251, 252, and 253 of the Telecommunications Act of 1996 (1996 Act).² The Public Utility Commission of Texas (Texas PUC), having been given general regulatory authority over public utilities within our jurisdiction in Texas, hereby submits these Comments on local competition issues most directly related to state regulatory policy.

¹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Notice of Proposed Rulemaking, FCC 96-182 (April 19, 1996).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§ 151 et seq.).

2. The 74th Texas Legislature passed an extensively revised Public Utility Regulatory Act of 1995 (PURA95)³ to begin the transition from the traditional monopoly environment in local exchange telecommunications service to a competitive local market. PURA95, which went into effect on September 1, 1995, created new local competition certification options beyond the standard Certificate of Convenience and Necessity (CCN). As of May 8, 1996, the Texas PUC has approved 24 applications for new entrants into the local service market, and 12 additional applications are pending Texas PUC action. So that these new certificate holders may compete with the incumbent local exchange carriers (ILECs), the Texas PUC recently adopted PUC Substantive Rule 23.97 (hereinafter referred to as the Texas Interconnection Rule) to govern interconnection of telecommunications carriers. A copy of this rule is provided with these comments as Attachment I. Several other rulemakings and key tariff filings are in progress, and will contribute to creating an efficient and effective transition to competitive local markets in Texas.

3. Since the passage of the 1996 Act, the Texas PUC has been aggressively exploring the possible effects of the federal statute on regulatory activities in Texas, and has established Project No. 15344 for this purpose. In this project, the Texas PUC has issued several rounds of questions regarding the relationship of the 1996 Act to PURA95 to which interested parties have been asked to file briefs. The Texas PUC also held a well-attended public workshop to debate these issues and discuss outstanding questions.

³ Public Utility Regulatory Act of 1995, Tex. Rev. Civ. Stat. Ann. art. 1446c-0 (Vernon Supp. 1996).

4. Furthermore, the Texas PUC has established some guidelines for implementing PURA95 in light of the 1996 Act. Clearly, the Texas PUC has an obligation to implement the provisions of PURA95 to the extent possible. In an order addressing certified issues in Docket No. 14658⁴ dated April 10, 1996, the Texas PUC ruled that it possesses statutory authority to ascertain whether the 1996 Act preempts any provision in PURA95. This authority is found in PURA95 §1.404, which states:

This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of public utilities to the extent that such construction preserves the validity of this Act and its provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.⁵

In addition, §601(c) of the 1996 Act states that it should not be interpreted to “modify, impair, or supersede Federal, State, or local law unless expressly so provided.”⁶ Therefore, the Texas PUC will harmonize any perceived differences in the two laws whenever possible. When evaluating any potential conflicts between the federal and state laws, the Texas PUC must determine only whether express preemption of the state statute has occurred. Many dockets filed with the Texas PUC will require consideration of how the federal law may affect the disposition of the case. Since these dockets must be handled on a case-by-case basis, it is uncertain to what extent the Texas PUC will encounter conflicts between the two pieces of legislation and determine whether express preemption has occurred.

⁴ PUC Docket 14658, *Application of Southwestern Bell Telephone Company, GTE Southwest, Inc., and Contel of Texas, Inc. for Approval of Flat-rated Local Exchange Resale Tariffs Pursuant to PURA 1995 §3.2532.*

⁵ PURA95, §1.404.

⁶ 1996 Act, §601(c).

II. Provisions of Section 251**A. Scope of the Commission's Regulations**

5. The FCC seeks comment regarding the extent to which its rules should elaborate upon the statutory provisions in the 1996 Act.⁷ In the Notice, the FCC suggests adopting explicit rules to address critical competitive issues, while allowing state PUCs discretion to resolve other issues in arbitration proceedings.⁸ The Texas PUC concurs that explicit rules may be helpful in certain instances, but urges the FCC to recognize the value of state regulatory experience and ensure that state legislatures and PUCs are indeed given adequate flexibility to address public policy concerns that may be unique to each state. The FCC should recognize that much of the implementation and enforcement of the 1996 Act is left in the hands of the states. The Texas PUC encourages the FCC to work with the states in a coordinated and cooperative manner to achieve the national goals of increased competition and decreased regulation.

6. The Notice requests comment on whether any existing state interconnection rules should be used as models or benchmarks for the FCC's rules.⁹ If the FCC wishes to adopt a state model, the Texas PUC suggests that the Texas Interconnection Rule would be appropriate. The Texas Interconnection Rule provides a set of guiding principles, consistent with the 1996 Act, that would allow state regulators the maximum amount of flexibility to address the unique public policy concerns in their respective states.

⁷ Notice, paras. 25-41.

⁸ Notice, para. 27.

⁹ Notice, para. 29.

7. The FCC notes that it would need explicit rules to guide its arbitration of disputes between ILECs and new entrants, if it is required under § 252(e) to assume those responsibilities.¹⁰ Although the Texas PUC understands the FCC's desire for explicit rules in this area, we wish to emphasize that we fully intend to carry out all of the duties imposed upon us by § 252.

8. In the Notice, the FCC tentatively concludes that it should adopt a single set of standards with which both arbitrated agreements and Bell Operating Company (BOC) statements of generally available terms must comply.¹¹ In addition, the FCC tentatively concludes that Congress intended §§ 251 and 252 to apply to both interstate and intrastate aspects of interconnection, service, and network elements, and that its regulations implementing the provisions apply to both aspects.¹² As is discussed throughout these Comments, the Texas PUC agrees that there are many areas in which the FCC should take the lead in formulating and applying nationwide minimum standards, as guiding principles. The Texas PUC agrees that §§251 and 252 apply to both interstate and intrastate arenas, as they cannot be separated practically into separate spheres of influence. However, there are other areas in which the Texas PUC believes that the states have been empowered by Congress to retain their flexibility to address public policy details that may be unique to each state.

¹⁰ Notice, para. 32.

¹¹ Notice, para. 36.

¹² Notice, para. 37.

B. Obligations Imposed by Section 251(c) on "Incumbent LECs"**1. Duty to Negotiate in Good Faith**

9. The Notice seeks comment on whether the FCC should establish national guidelines regarding good faith negotiation under §251(c)(1).¹³ For negotiation to work, it is important that all parties negotiate in good faith. Any FCC guidelines on negotiation should be applicable to all parties to the negotiation. The Texas PUC agrees with the FCC's conclusion that certain actions are not "good faith." For example, although participation in negotiations should be restricted to the parties involved, imposing what amounts to a "gag order" on negotiators is inconsistent with "good faith."¹⁴ If the ILEC fails to negotiate in good faith, the entity seeking interconnection can seek mediation or arbitration from the state commission. Under §252(b)(4)(C), if a party fails or refuses to respond to a reasonable request from the state commission, the state commission may make a decision on the basis of the best information available. The Texas PUC believes that this is the appropriate remedy to pursue in the event a party fails to negotiate in good faith. Potential interconnectors, ILECs, and state commissions should concentrate on implementing timely arbitration decisions instead of trying to determine whether or not any party has failed to negotiate in good faith. The Texas PUC also notes that requests for arbitration may be received as early as 135 days after the effective date of the Act, or by June 22, 1996. It is doubtful that any FCC rules on good faith negotiation would be adopted by that time.

¹³ Notice, para. 47.

¹⁴By this we mean that negotiating/arbitrating parties should not be prohibited from sharing information relating to the negotiations/arbitrations if they so desire. However, the Texas PUC has made no ruling regarding intervention rights in such proceedings. The Texas PUC agrees that parties may protect trade secrets or proprietary information through protective orders.

10. The FCC seeks comments on whether the provisions of §251(a)(1) require all pre-existing interconnection agreements between ILECs be submitted to state commissions for review and approval under §252.¹⁵ The Texas PUC has also recently sought comment from interested parties concerning the meaning of this provision¹⁶ and has not yet formed any conclusions concerning the proper application of the §251(a)(1) language. However, because there are over 50 ILECs currently providing service in Texas, the Texas PUC is concerned about the number and scope of these pre-existing agreements and the workload that would be involved in reviewing and approving such agreements. The Texas Interconnection Rule includes a provision that requires an ILEC to make its existing agreements available for review by an entity seeking to enter into an interconnection agreement.¹⁷ By making the agreements available in negotiations, the rule provides the same level of relevant information to parties as would be available publicly under §252(h) if the agreements had been approved by the state commission. The rule seeks to further the Act's goals of encouraging negotiation and preventing discriminatory agreements while also avoiding an unnecessary increase in the Texas PUC's regulatory workload.

11. Concerning the issue of whether one party to an existing agreement may compel renegotiation and arbitration under the Act,¹⁸ the Texas PUC believes that such action should be allowed. Existing agreements may need to be reviewed to determine whether they meet the "new world" standards, including open access and non-discrimination. For new agreements negotiated under §252, the length of the agreement and any provisions concerning the ability to renegotiate

¹⁵ Notice, para. 48.

¹⁶ PUC Project No. 15344.

¹⁷ PUC Subst. R. 23.97(h)(2).

¹⁸ Notice, para. 48.

or terminate the agreement before it expires are terms and conditions that the parties should be able to address in their negotiations.

2. Interconnection, Collocation, and Unbundled Elements

a. Interconnection

12. The Notice tentatively concludes that uniform interconnection rules would facilitate entry by competitors in multiple states and requests comments on the consequences of not establishing such specific rules.¹⁹ The Texas PUC agrees that uniform minimum standards may benefit the orderly transition to competition, but the PUC also believes that there is merit in permitting states to deviate from or enhance such standards with different approaches so that states can respond more appropriately to technical, demographic, or geographic issues specific to that state or region. States vary with respect to requirements regarding technical upgrades to their networks. For example, PURA95 specifies timelines for the installation by incumbent local exchange carriers of digital technology and Common Channel Signaling 7 (SS7) capability.²⁰ A uniform interconnection rule that specifies technical standards without recognizing the technical differences in the networks among states may be difficult to implement. The Texas PUC believes that states would benefit greatly from workshops or fora led by the industry or the FCC that address technical issues and help identify solutions to common technical concerns among states. If the FCC deems it necessary to adopt technical guidelines, the Texas PUC urges the FCC to adopt minimum interconnection guidelines that permit the states the flexibility to deviate or mandate additional guidelines to respond to concerns unique to individual states. These minimum

¹⁹ Notice, paras. 50-51.

²⁰ PURA95, §3.358(c)-(d).

interconnection guidelines should assist states, if necessary, in completing arbitration and assist the FCC in evaluating Bell Operating Company (BOC) compliance under §271 or in assuming a state commission's responsibilities if the state commission fails to act.²¹ The Texas interconnection process is described in more detail in the next several paragraphs.

13. The Notice seeks comment on interconnection rules in place in individual states.²² PURA95 §3.458 delineates the statutory provisions regarding interconnection within the State of Texas. Specifically, §3.458(b) mandates negotiation as the preferred approach to determine interconnection rates, terms and conditions:

Telecommunication providers shall negotiate network interconnectivity, charges, terms, and conditions, and in that event the commission shall approve the interconnection rates. The commission may resolve disputes filed by a party to those negotiations.²³

Similarly, the 1996 Act also recognizes negotiation as the vehicle to address interconnection issues.

14. The Texas Interconnection Rule is designed to facilitate negotiations without micromanaging the negotiations or competitive process. The rule sets forth principles of interconnection which are intended to serve as guidelines not only in the negotiating process but also in the arbitration process. These principles fall into four broad categories: 1) general; 2) technical; 3) billing arrangements; and 4) rates, terms, and conditions. In addition, negotiating local exchange carriers must also address certain minimum interconnection arrangements and

²¹ The Texas PUC wishes to note that it fully intends to meet its obligations under §252 in this regard. (See PURA95, §3.458(b) and §3.458(d).)

²² Notice, para. 52.

²³ PURA95, §3.458(b).

implement certain customer safeguards. In the event that the negotiating parties fail to reach an agreement, the rule delineates the arbitration process, which reflects the requirements of the 1996 Act.²⁴ In adopting guidelines in its Interconnection Rule, the Texas PUC has attempted to balance the need to encourage good-faith negotiations among local exchange carriers and, at the same time, provide the negotiating parties the flexibility to explore mutually acceptable interconnection options. To that extent, the Texas Interconnection Rule is consistent with the 1996 Act and the approach advocated in the Notice.

15. The Notice requests comments on whether the term "interconnection" as used in §251(c)(2) refers to both facilities and equipment physically linking two networks and to transport and termination services, or if the term refers only to the physical linking of the two networks.²⁵ The Texas PUC notes that the term "interconnection" as defined in its rule encompasses both facilities and equipment physically linking two networks and the transport and termination of calls.²⁶ The Texas PUC does not find an inherent contradiction between the pricing standard in §252(d)(1) for interconnection and §252(d)(2) for transport and termination of calls. The reason for this conclusion is that to the extent §252(d)(2) allows for the mutual and reciprocal recovery of each carrier's costs, the recovery could be interpreted to mean TSLRIC (including a reasonable profit) plus a reasonable contribution to joint and common costs, which is consistent with the standard in §252(d)(1).

²⁴ 1996 Act, §252(b).

²⁵ Notice, para. 54.

²⁶ PUC Subst. R. 23.97 (b)(10)

16. The Texas PUC agrees that as a minimum federal standard, interconnection at a particular point should be considered technically feasible within the meaning of §251(c)(2) if an ILEC currently provides, or has provided in the past, interconnection to any other carrier at that point, and that the ILEC has the burden of demonstrating that interconnection at a particular point is technically infeasible, in the event of a dispute.²⁷ In this context, it is worth noting that the Texas Interconnection Rule permits a minimum of one point of interconnection in each exchange area or group of contiguous exchange areas within a single LATA, as requested by the interconnecting local exchange carrier, and interconnecting local exchange carriers may negotiate additional interconnection points as necessary.²⁸ Thus the rule does not impose a technical or geographical limit on the number of points of interconnection. The Texas PUC urges the FCC to allow states to designate additional technically feasible interconnection points, if and when necessary. PURA95 §3.452 authorizes the Texas PUC to require unbundling beyond that ordered by the FCC. The Texas PUC believes that states should be allowed to determine additional technically feasible interconnection points in order to respond to requests by new entrants for further unbundling in a timely manner and thereby ensure the most technically and economically efficient interconnection.

17. The Notice requests comments on whether the FCC should adopt explicit national standards for the terms and conditions for interconnection in general and, in particular, for installation, maintenance, and repair of the ILEC's portion of interconnection facilities.²⁹ The Texas PUC notes that under its Interconnection Rule, all interconnecting LECs, including ILECs,

²⁷ Notice, paras. 57 and 58.

²⁸ PUC Subst. R. 23.97(d)(2)(D).

²⁹ Notice, para. 61.

are required to comply with industry standards and the Texas PUC's service quality rules for installation, maintenance, and repair of each carrier's portion of interconnection facilities.³⁰ The Texas PUC believes that any federal rules on service quality should also recognize the existence of service quality rules throughout most individual states.

18. The Notice requests comment on state policies regarding the terms and conditions for interconnection that might serve as models.³¹ In its Interconnection Rule, the Texas PUC requires interconnecting LECs to agree to construct and/or lease and maintain the facilities necessary to connect the networks.³² The entity that constructs and maintains the facility will bear the financial responsibility of such construction and maintenance, unless the parties involved agree to other financial arrangements. A LEC can recover the costs of construction and maintenance of its facilities if such facilities are used by other LECs.

19. The Notice requests comment on the criteria appropriate for determining whether interconnection is "equal in quality."³³ The Texas PUC supports the adoption of language that would ensure that an ILEC offers interconnection that is equal in quality. The Texas Interconnection Rule requires interconnecting LECs to provide each other physical interconnection in a "non-discriminatory" manner.³⁴ "Non-discriminatory" is defined as the "type of treatment that is not less favorable than that an interconnecting CTU³⁵ provides to itself, or its

³⁰ PUC Subst. R. 23.97(d)(1), (d)(2), and (i)(3).

³¹ Notice, para. 62.

³² PUC Subst. R. 23.97(d)(2)(D).

³³ Notice, para. 63.

³⁴ PUC Subst. R. 23.97(d)(2)(I).

³⁵ A certified telecommunications utility (CTU) is defined as a dominant carrier or a nondominant carrier that has been certificated to provide local exchange service in the state of Texas.

affiliates or other CTUs.”³⁶ To the extent new entrants have access to interconnection agreements between an ILEC and its subsidiary, its affiliate or another ILEC, the new entrant will be able to evaluate whether the interconnection it is offered by the ILEC is equal in quality.

20. The Notice requests comments on whether the FCC has the authority to require, in addition to physical collocation, virtual collocation and meet-point interconnection arrangements as well as any other reasonable methods of interconnection.³⁷ The Texas PUC notes that its Interconnection Rule recognizes collocation, both physical and virtual, and meet point interconnection as reasonable methods of interconnection.³⁸ In addition, if a LEC has sufficient facilities in place, it is required to provide intermediate transport arrangements between other interconnecting LECs, upon request.³⁹

b. Collocation

21. The Texas PUC supports the adoption of national standards where appropriate to implement the collocation requirements of the 1996 Act.⁴⁰ The FCC’s rules on expanded interconnection⁴¹ served as the model for the expanded interconnection rule⁴² in Texas for intrastate switched access, special access, and private line. The Texas rule on expanded interconnection requires that expanded interconnection for intrastate services be offered at the

³⁶ PUC Subst. R. 23.97(b)(13).

³⁷ Notice, para. 64.

³⁸ PUC Subst. R. 23.97(d)(2)(D) and (I).

³⁹ PUC Subst. R. 23.97(d)(2)(F).

⁴⁰ Notice, para. 67.

⁴¹ *Special Access Expanded Interconnection Order*, 7 FCC Rcd 7369; *Switched Transport Expanded Interconnection Order*, 8 FCC Rcd 7374; *Virtual Collocation Expanded Interconnection Order*, 9 FCC Rcd 5154.

⁴² PUC Subst. R. 23.92.

same locations in the same manner and, except for price, under the same terms and conditions as expanded interconnection is offered for interstate services. Under the Texas Interconnection Rule, a LEC must offer physical collocation, upon request, unless technical or space limitations make such collocation impractical. Virtual collocation must be offered at the option of the LEC requesting the interconnection.⁴³

22. The Notice seeks comments on whether the FCC should establish guidelines that states can apply when determining whether physical collocation is impractical for technical reasons or lack of space.⁴⁴ The Texas PUC is not opposed to the establishment of such guidelines. However, it urges the FCC to adopt rules that would allow states the flexibility to modify the guidelines or adopt additional guidelines, as deemed necessary.

23. The Texas PUC also supports the readoption of prior standards governing physical and virtual collocation established in the *Expanded Interconnection* proceeding.⁴⁵ The Texas PUC believes that it is appropriate to apply the same standards for collocation for local exchange service because the same type of equipment and facilities may be used by the new entrant for the collocation of local exchange service, switched access, and special access services.

c. Unbundled Network Elements

24. The Texas PUC supports the establishment by the FCC of a minimum set of network elements that ILECs must unbundle and, to the extent necessary, establishment of additional or

⁴³ PUC Subst. R. 23.97(d)(2)(I).

⁴⁴ Notice, para. 72.

⁴⁵ Notice, para. 73.

different unbundling requirements in the future as services, technology, and the needs of competing carriers evolve.⁴⁶ States should have the ability to deviate from such minimum unbundling requirements to address state-specific concerns. The Texas PUC concurs with the tentative conclusion that states should be allowed to require additional unbundling of LEC networks as necessary.⁴⁷ In this context, it should be pointed out that PURA95 authorizes the Texas PUC to require further unbundling of LEC network/services beyond that ordered by the FCC.⁴⁸

25. The Notice seeks comments on whether the omission of the term "economically reasonable" in §251(c)(3) can be construed to imply that carriers requesting unbundling must pay the associated cost and on whether such interpretation is consistent with the intent of the 1996 Act.⁴⁹ The Texas PUC believes that the interpretation of §251(c)(3) as stated above is consistent with the 1996 Act because the pricing standards for unbundled elements under §252(d)(1) ensure that carriers requesting unbundling would pay for the cost of the unbundled network element.

26. The Notice requests comments on whether the term "non-discriminatory" in §251(c)(3) of the 1996 Act could be construed to prohibit an ILEC from providing inferior access to a requesting carrier.⁵⁰ The Texas PUC supports such an interpretation of the term "non-discriminatory." LECs in Texas are required to provide each other with non-discriminatory

⁴⁶ Notice, para. 77.

⁴⁷ Notice, para. 78.

⁴⁸ PURA95 §3.452.

⁴⁹ Notice, para. 88.

⁵⁰ Notice, para. 91.

access to signaling systems, facilities, databases, and information.⁵¹ The Texas Interconnection Rule defines "non-discriminatory" as the "type of treatment that is not less favorable than that an interconnecting CTU provides to itself, or its affiliates or other CTUs."⁵² Such a standard is necessary to ensure that new entrants are not placed at a competitive disadvantage by the ILEC.

27. The Notice delineates specific unbundling requirements for four major areas: local loop, local switching capability, local transport and special access, and databases and signaling systems.⁵³ The Texas Interconnection Rule does not prescribe specific unbundling requirements. However, it does require LECs to provide each other non-discriminatory access to signaling systems, facilities, databases, and information as required to ensure interoperability of networks and efficient, timely provision of services to end-user customers. To the extent that such access would entail unbundling, the rule addresses unbundling requirements. Furthermore, the rule prohibits access to a LEC's network proprietary information or customer proprietary network information unless otherwise permitted by the rule. Any disputes regarding classification of all or part of such access as proprietary will be resolved in the arbitration process. The Texas PUC is not opposed to the establishment of specific unbundling proposals as outlined in the Notice. However, the Texas PUC believes any specific unbundling rules adopted by the FCC should grant the states the flexibility to expand upon the FCC's unbundling requirements, as they deem necessary, to respond to state-specific concerns.

⁵¹ PUC Subst. R. 23.97(d)(2)(B).

⁵² PUC Subst. R. 23.97(b)(13).

⁵³ Notice, paras. 92-116.

28. The Notice requests comment on the unbundling of local loops into sub-elements.⁵⁴ PURA95 §3.453(a) requires certain ILECs, including Southwestern Bell Telephone Company (SWB), GTE of the Southwest, Inc. (GTE), and any other companies electing into the incentive regulation plan of Subtitle H in PURA95, to file a usage sensitive loop resale tariff. Section 3.453(b) defines "loop resale" as "the purchase of the local distribution channel or 'loop' facility from the incumbent local exchange company for the purpose of resale to end user customers." No unbundling of this loop facility is specifically required by PURA95 §3.453. However, §3.452, Unbundling, requires ILECs to unbundle their networks "to the extent ordered by the Federal Communications Commission"; it also requires that a hearing be held to consider requiring further unbundling.

29. Certain "decisions in principle" from the Texas PUC's recent *Order of Remand* in Docket No. 14659⁵⁵ are also relevant to local loop unbundling. In this document the Texas PUC directed the subject ILECs to "provide the following types of loops for resale: (a) 2-wire analog voice grade loops; (b) 4-wire analog voice grade loops;⁵⁶ and (c) 'dry' loops that are conditioned to transport digital signals at, a minimum, the transmission speed of Integrated Services Digital Network (ISDN)." The Texas PUC stated that such loops as DS-1 loops, DS-3 loops, and fiber loops used for Synchronous Optical NETWORK (SONET) interfaces fall well outside the concept

⁵⁴ Notice, paras. 94-97.

⁵⁵ *Application of Southwestern Bell Telephone Company, GTE Southwest, Inc. and Contel of Texas, Inc. for Usage Sensitive Loop Resale Tariffs Pursuant to PURA 1995 §3.453*. This Order, issued on April 10, 1996, is included as Attachment IV.

⁵⁶ An issue on remand is whether a combination of two 2-wire analog voice grade loops can be provided by the ILEC as the technical equivalent of a 4-wire loop.

of local service, and hence need not be included in an ILEC's loop resale tariff. (Such loops may be purchased as private line services, however.)

30. In this same *Order*, the Texas PUC also found that loop facilities transport service, used to transport the loop connection to the competitor's switch, should be made available on a fully unbundled basis. An issue on remand is whether the current availability of loop transport in the ILECs' tariffs is sufficient, or whether the loop resale tariffs should contain separate rates, terms, and conditions for such transport.

31. An additional related finding in this *Order* was that competitors "should be given flexibility in purchasing multiplexing equipment from the ILEC and, in doing so, be allowed to specify multiplexing formats, so long as those formats meet industry standards." On the other hand, an ILEC "should not be required to purchase multiplexing equipment that is not normally used in its network without appropriate compensation," as with a sale/leaseback arrangement or some other means.⁵⁷

32. The FCC seeks comment on several issues relating specifically to the unbundling of databases and signaling systems.⁵⁸ The Texas PUC concurs with the FCC's tentative conclusion that requiring ILECs to unbundle their signaling systems and databases is consistent with the intent of the 1996 Act.⁵⁹ In support of this concept, the Texas Interconnection Rule requires that:

⁵⁷ Docket No. 14659, *Order of Remand*, p. 4.

⁵⁸ Notice, paras. 107-116.

⁵⁹ Notice, para. 107.

Interconnecting CTUs shall provide each other non-discriminatory access to signaling systems, databases, facilities, and information as required to ensure interoperability of networks and efficient, timely provision of services to customers.⁶⁰

The Texas PUC believes that it is important to allow new carriers the ability to access databases for the purposes of number assignment, service order processing, and repair services. Therefore, to the extent possible, access to databases should be provided via electronic interfaces on a real-time and interactive basis.

33. Although the Texas Interconnection Rule requires carriers to provide access to signaling systems, databases, facilities, and information, the Texas PUC recognizes that potential access to competitively sensitive data poses a significant dilemma, as the FCC observes in the Notice.⁶¹ To address this issue, the Texas PUC has included a provision in its Interconnection Rule that states:

This section [relating to interconnection principles] should not be construed to allow an interconnecting CTU access to another CTU's network proprietary information or customer proprietary network information....⁶²

34. The Notice seeks comment on various state regulations requiring the unbundling of signaling systems and databases.⁶³ The Texas Interconnection Rule requires carriers to provide "non-discriminatory" access to signaling systems and databases, where "nondiscriminatory" is

⁶⁰ PUC Subst. R. 23.97(d)(2)(B).

⁶¹ Notice, para. 115.

⁶² PUC Subst. R. 23.97(d)(1)(E).

⁶³ Notice, Para. 109.